HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.797 of 2002
Date of decision : 28.5..2007

Fateh Singh and another **.....Appellants**

versus

Smt.Chameli and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Sanjay Kumar, Advocate for the appellants.
Mr.Vikram Singh, Advocate for the respondents.

* * *

JUDGMENT

HEMANT GUPTA, J.

The defendants are in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit for possession in respect of the land in dispute was decreed.

It is the case of the plaintiff the she is the owner of plot comprised in Khewat No.277/272, Khatoni No.449, Rectangle and Killa No.61/46, measuring 5 marlas and that the defendants have encroached upon the said land on 16.4.1991, therefore, she is entitled to possession of the area encroached.

In reply, the defendants took up a stand that the plaintiff wants to usurp the property of the defendants as the defendants are the owners of the suit property since their ancestors. The defendants have

constructed a pucca house at the said land about 40-45 years ago. It was also alleged that the suit property is not part of the Khewat No.277/272, Khatoni No.449, Rectangle and Killa No.61/46, as claimed.

This Court on 12.2.2002 appointed a Local Commissioner to visit the suit land to ascertain as to whether or not the house of the appellant is built within Khasra No.61/46. The issue between the parties was in respect of demarcation of the suit property. In pursuance of the said order, the report was submitted on 10.3.2002 to the effect that demarcation could not be carried out and the Tehsildar be directed to provide proper equipment to conduct the same.

Subsequently, this Court on 9.1.2006, directed the Deputy Commissioner, Sonipat to depute an officer not below the rank of Tehsildar to ascertain as to whether or not the house of the appellants is built within Khasra No.61/46. In pursuance of said order, demarcation has been carried out by the Tehsildar Ganaur and demarcation report dated 2.3.2006 has been forwarded to this Court on 6.3.2006. The said report is marked as Exhibit CX.

Since the dispute between the parties revolves around the fact whether or not the house of the appellant is built within Khewat No.277/272, Khatoni No.449, Rectangle and Killa No.61/46 and it has been found that the portion marked as H G F O N J K L in the site plan prepared in the report itself, is in illegal possession of the appellant Fateh Singh son of Mool Chand.

In view of the demarcation being carried out and the appellant having been found in illegal possession of part of the land in

dispute, the judgment and decree passed by the Courts below stand modified to the extent so as to grant a decree for possession of the land marked as H G F O N J K L, as per the demarcation report Exhibit CX, which be read as part of the decree.

The appeal stands disposed of in the above terms.

(HEMANT GUPTA)
JUDGE

May 28, 2007
**mohinder*